

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

ELAINE S WENDEL :
 :
 Plaintiff, : Civil Action No. 15-cv-00936
 :
 -v- :
 :
 MULLOOLY, JEFFREY, ROONEY &
 FLYNN, LLP
 Defendant. :

**MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION TO HOLD
DEFENDANT'S MOTION TO DISMISS PLAINTIFF'S ORIGINAL COMPLAINT IN
ABEYAHNCE**

Defendant has filed a motion to dismiss Plaintiff's original complaint. (Dkt#7). Plaintiff will be filing a motion to amend its complaint by midnight on December 28, 2015. If granted, this would obviously moot the issue of whether Plaintiff's first amended complaint withstands scrutiny under Rule 12(b)(6). As such, Plaintiff respectfully asks that this court hold Defendant's motion to dismiss in abeyance, pending resolution of Plaintiff's motion to amend out of an interest in judicial economy. *See Indergit v. Rite Aid Corp.*, 52 F.Supp.3d 522, 525-26 (S.D.N.Y.,2014) (noting that the Second Circuit has held that holding a motion in abeyance is appropriate where resolving another issue in the first instance will necessarily inform, and perhaps moot the analysis of the motion) (*citing The Author's Guild, Inc. v. Google, Inc.*, 52 F.Supp.2d 522, 425-526

DATED: December 28, 2015

/s/ Timothy Hiller
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